

BPS/JFV:mg

20-257-3-148

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SABRINA FLOWERS,)
)
Plaintiff,)
)
vs.) Court No.: 08 C 449
)
SOUTH WESTERN MOTOR SALES, INC.,)
d/b/a TOYOTA SCION ON WESTERN AND)
SANTANDER CONSUMER USA, INC.)
d/b/a DRIVE FINANCIAL SERVICES)
)
Defendant,)

**DEFENDANT, SOUTH WESTERN MOTOR SALES, INC.'s MOTION TO DISMISS
COUNT III OF PLAINTIFF'S AMENDED COMPLAINT**

Defendant SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA ON WESTERN and d/b/a SCION ON WESTERN, improperly sued as SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA SCION ON WESTERN, by and through its attorneys CREMER, KOPON, SHAUGHNESSY & SPINA, LLC, Brian P. Shaughnessy, and Jaya F. Venkataramani, and for its Motion to Dismiss Count III of Plaintiff's Amended Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(6). In support of its motion, Defendant states as follows:

1. That on January 21, 2008, Plaintiff, Sabrina Flowers, brought an action in the United States District Court for the Northern District of Illinois.
2. That on April 7, 2008, the Plaintiff filed a four-count Amended Complaint against Defendant, South Western Motor Sales, Inc., d/b/a Toyota Scion on Western alleging violations of the Illinois Consumer Fraud Act, 815 ILCS 505/2 *et seq.*, the Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq.*, and alleging negligence arising out of a

transaction involving the purchase of a used 2005 Mitsubishi Galant. A copy of Plaintiff's Amended Complaint is attached hereto and made a part hereof as *Exhibit A*.

3. That Count III of Plaintiff's Amended Complaint alleges that Defendant, South Western Motor Sales, Inc. had a duty to provide plaintiff with written reasons why it took adverse action with respect to her loan application, namely that it did not submit the correct application to Drive Financial or provide an ECOA letter.
4. That Count III of Plaintiff's Amended Complaint also incorporates by reference Count II of Plaintiff's Amended Complaint.
5. That Count II of Plaintiff's Amended Complaint alleges that Defendant, South Western Motor Sales, Inc. is a "creditor" as defined by the Equal Credit Opportunity Act, 15 U.S.C. §1691(a)(e) because it "regularly referred applicants to creditors, selected creditors to whom such applications would be made and did so in this case" (emphasis added). *See Exhibit A.*
6. That the Equal Credit Opportunity Act, 15 U.S.C. §1691(a)(e) "Definitions," defines the term "creditor" as "any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit." A copy of 15 U.S.C. §1691(a) is attached hereto and made a part hereof as *Exhibit B.*
7. That this definition of creditor is further defined in the Code of Federal Regulations, 12 C.F.R §202.2(a)(12), promulgated pursuant to the Equal Credit Opportunity Act, defining a creditor as "a person who, in the ordinary course of business, regularly participates in

the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates."

8. That Plaintiff's definition of creditor as directed to Defendant South Western Motor Sales, Inc. in Count II of Plaintiff's Amended Complaint is not the definition encompassed in the Equal Credit Opportunity Act, 15 U.S.C. §1691(a)(e).
9. That therefore Defendant, South Western Motor Sales, Inc. is not deemed a creditor under the Equal Credit Opportunity Act, 15 U.S.C. §1691(a)(e), and as such, its actions do not come under the purview of the Act, as alleged in Count II of Plaintiff's Amended Complaint, and as alleged in Count III of Plaintiff's Amended Complaint by reference.
10. That Defendant South Western Motor Sales, Inc. seeks dismissal of Count III of Plaintiff's Amended Complaint pursuant to Fed. R. Civ. P. 12(b)(6).
11. That Dismissal is appropriate because Plaintiff fails to state a proper claim for relief directed to Defendant South Western Motor Sales, Inc. under the Equal Credit Opportunity Act, 15 U.S.C. §1691 *et seq.*
12. That Defendant, South Western Motor Sales, Inc. adopts and incorporates by reference its *Memorandum in Support of Its Motion to Dismiss Count III of Plaintiff's Amended Complaint* as though fully set forth herein.

WHEREFORE, Defendant, SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA ON WESTERN and d/b/a SCION ON WESTERN, improperly sued as SOUTH WESTERN MOTOR SALES, INC. d/b/a TOYOTA SCION ON WESTERN, respectfully requests this Honorable Court to dismiss Count III of Plaintiff's Amended Complaint and any other relief this Honorable Court deems just.

Respectfully Submitted,

/s/ Brian P. Shaughnessy

One of the Attorneys for
South Western Motor Sales, Inc.

Brian P. Shaughnessy
Jaya F. Venkataramani
CREMER, KOPON, SHAUGHNESSY & SPINA, LLC
Attorneys for Defendant, South Western Motor Sales, Inc.
180 North LaSalle Street, Suite 3300
Chicago, IL 60601
Tel: (312) 726-3800
Fax: (312) 726-3818
ARDC No.: 3125181
bshaughnessy@cksslaw.com

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